



COUNTY OF LOS ANGELES

CHIEF INFORMATION OFFICE

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December 03, 2013

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

17 December 3, 2013

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

APPROVAL OF GOOGLE DEVELOPERS PUBLISHING ACCOUNT WITH GOOGLE, INC. TO DEVELOP MOBILE APPLICATIONS TO BE DEPLOYED ON ANDROID-BRANDED DEVICES

**(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

The Chief Information Officer is requesting approval for a Google Developers Publishing Account with Google, Inc., to allow the County of Los Angeles to develop mobile applications to be deployed on Android-branded devices.

IT IS RECOMMENDED THAT THE BOARD:

1. Approve and authorize the Chief Information Officer (CIO), or his designee, to open a Google (Google) Developers Publishing Account (Account), the most recent version provided in the attached Google Developer Distribution Agreement, which will govern the development of mobile applications for Android-branded devices: (a) commencing on the CIO acceptance thereof and continuing until terminated by either Party at any time, and (b) having a one-time fee of \$25.
2. Authorize the CIO to be the administrator of the Account on behalf of the County and ensure departments conform to County obligations when developing applications under said Account.
3. Authorize the CIO, or his designee, to accept modifications to the Account as made from time to time by Google, and to terminate the Account if the CIO determines it to be in the best interest of the County.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the Account is to allow County application development staff to develop mobile applications (applications) for Android-branded devices, to be distributed solely by Google using its Google Play Marketplace Store (Market). Google requires an authorized legal representative of the County to open an Account to develop applications for Android-branded devices. After Board approval and the CIO opens the Account, the Department of Public Social Services (DPSS) would like to utilize and deploy an application for County citizens to provide scanned documents for public assistance eligibility consideration.

Approval of the second recommended action designates the CIO, as the County administrator of the Account, to oversee the Account and to ensure the development, testing, and distribution of applications adhere to the obligations prescribed in the Account.

Approval of the third recommended action gives the CIO authority to accept Google's modifications to the Account, acceptance of which is a condition to continued development and distribution of applications for Android-branded devices. Such action also delegates the CIO the ability to terminate the Account if determined to be in the best interest of the County which, as described below, will help mitigate risk to the County associated with certain terms and conditions of the Account.

Implementation of Strategic Plan Goals

The recommended actions support Goal 1, Operational Effectiveness and Goal 3, Community and Municipal Services.

FISCAL IMPACT/FINANCING

The one-time fee of \$25 to participate in the Google Developer Program, as well as any increases to such fees, will be paid out of the CIO's FY 2013-14 Operating Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

County Counsel has identified a number of instances in which the Account with Google departs from the County's standard terms and conditions, the most significant of which are as follows:

1. Use of County Applications and Other Intellectual Property: The Account grants Google a license to use the County's applications: (i) for administration and demonstration purposes in connection with the operation and marketing of the Market, (ii) to make improvements to the Android platform, and (iii) to distribute the County's applications according to the County's publishing options.

The Account further grants Google a license to use the County's brand features (e.g., trade marks, logos, domain names, etc.): (i) in connection with distribution and sale of the County's applications throughout the Market, or to otherwise fulfill Google's obligations under the Account, and (ii) in announcements in the Market, outside the Market when mentioned with other applications, in presentations, and in customer lists. Generally, these license rights terminate with respect to a specific application if the County ceases distribution of that application, and in their entirety if the County or Google terminates the Account. However, Google's license continues beyond termination in two instances: (i) as is necessary for Google to allow users to exercise the reinstallation rights described in Item 3 below, and (ii) Google may retain and use copies of the County's application after termination for support of the Market and the Android platform. Finally, the Account specifies

that, once an application user downloads one of the County's applications, the user has a perpetual license to that application, unless the County specifies another term through an end user license agreement.

2. Maintenance and Support Obligations: The Account requires the County to be solely liable for maintenance and support of County applications. The Account further specifies that ceasing distribution of an application or terminating the Account does not terminate the County's obligation to continue to support previously downloaded applications.

3. Reinstallation Rights: The Account provides that, once an application user downloads one of the County's applications, the user is allowed unlimited reinstallations of that application unless the County removes the application from the Market for one of a limited number of circumstances, which include, but are not limited to, alleged or actual infringement of intellectual property rights or alleged or actual defamation.

4. Indemnification; Limitation of Liability: The Account requires the County to indemnify, defend, and hold harmless Google for: (i) County's use of the Market in violation of the Account, and (ii) in the event any of the County's applications infringes on any person's intellectual property rights, defames any person, or violates any right of publicity. The Account further specifies that Google, its subsidiaries, affiliates, and licensors shall have no liability under the Account or under any theory of liability.

5. Account Modifications: The Account allows Google to modify the Account at any time. The Account conditions continued distribution of the County's applications on the County's acceptance of such modifications.

Regarding the first departure, if Google uses County's applications or other intellectual property in a manner that is unacceptable to the County, the County may terminate the Account with thirty days' prior written notice, which, except in the two instances described in Item 1 above, will terminate Google's license to use the County's applications and other intellectual property. As the first departure relates to application users, as permitted by the Account (see Item 1 above), the CIO will require County Departments use an end user license agreement that allows the County to terminate the users' license to the County application, among other things, if the user misuses the County's application.

Regarding the second and third departures, as permitted by the Account, the CIO will require County Departments use an end user license agreement that will require application users to acknowledge and agree that in the event the County determines to cease distribution of an application and to cease maintenance and support of that application, then users will not be able to obtain maintenance and support from the County for that application.

Regarding the fourth departure from County's standard terms and conditions, the CIO has reviewed the proposed Account, including Indemnification and Limitation of Liability with the Chief Executive Office, Risk Management Branch (CEO-RMB). CEO-RMB concurs with CIO's assessment that to develop and distribute applications as prescribed by the Account should pose minimal financial risk to the County. Furthermore, in the event that any financial risk arises, County may immediately terminate the Account. Having the ability to terminate will not eliminate the risk exposure to County, but may mitigate it.

Regarding the fifth departure, although Google is given broad authority to modify the Account, in the event Google modifies it in a manner which is unacceptable, the County may terminate the Account

by not accepting the modified account when notified by Google and ceasing to use the Market.

The Account does not include County's standard policy and legal provisions, such as Safely Surrendered Baby Law and Determination of Contractor Non-Responsibility and Contractor Debarment, because the Account subscribes to Google's distribution channel for applications rather than engaging Google to provide a good or service to the County.

CIO believes the benefits from providing applications to County constituents and the one-time fee of \$25, outweigh the risk sufficiently to warrant the development of the applications for Android devices.

The Google Developer Distribution Agreement has been reviewed and approved as to form by County Counsel.

CONTRACTING PROCESS

The Account is required for County to develop applications for Android-branded devices and to distribute the applications through Google's Market for use with Android-branded devices.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The recommended Board action will enhance delivery of County services by allowing County departments to develop applications to be distributed and delivered to Android-branded devices.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard Sanchez", with a stylized, cursive script.

RICHARD SANCHEZ

Chief Information Officer

RS:pg

Enclosures

c: Chief Executive Officer
Executive Officer, Board of Supervisors
County Counsel



Developer Distribution Agreement

Definitions

Google: Google Inc., a Delaware corporation with principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States.

Device: Any device that can access the Market, as defined herein.

Products: Software, content and digital materials distributed via the Market.

Market: The marketplace Google has created and operates which allows registered Developers in certain countries to distribute Products directly to users of Devices.

Developer or You: Any person or company who is registered and approved by the Market to distribute Products in accordance with the terms of this Agreement.

Developer Account: A publishing account issued to Developers that enables the distribution of Products via the Market.

Payment Processor(s): Any party authorized by Google to provide payment processing services that enable Developers with optional Payment Accounts to charge Device users for Products distributed via the Market.

Payment Account: A financial account issued by a Payment Processor to a Developer that authorizes the Payment Processor to collect and remit payments on the Developer's behalf for Products sold via the Market. Developers must be approved by a Payment Processor for a Payment Account and maintain their account in good standing to charge for Products distributed in the Market.

Authorized Carrier: A mobile network operator who is authorized to receive a distribution fee for Products that are sold to users of Devices on its network.

1. Introduction

1.1 The Market is a publicly available site on which Android Developers can distribute Products for Devices. In order to distribute Products on the Market, you must acquire and maintain a valid Developer Account.

1.2 If you want to charge a fee for your Products, you must also acquire and maintain a valid Payment Account from an authorized Payment Processor.

2. Accepting this Agreement

2.1 This agreement ("Agreement") forms a legally binding contract between you and Google in relation to your use of the Market to distribute Products. In order to use the Market to distribute Products, you must first agree to this Agreement by clicking to accept where this option is made available to you. You may not distribute Products on the Market if you do not accept this Agreement.

2.2 You may not use the Market to distribute Products and may not accept the Agreement unless you are verified as a Developer in good standing. This Agreement will automatically terminate if you are (a) not a Developer in good standing, or (b) a person or entity barred from using Android software under the laws of the United States or other countries including the country in which you are resident or from which you use the Android software.

2.3 If you are agreeing to be bound by this Agreement on behalf of your employer or other entity, you represent and warrant that you have full legal authority to bind your employer or such entity to this Agreement. If you do not have the requisite authority, you may not accept the Agreement or use the Market on behalf of your employer or other entity.

3. Pricing and Payments.

3.1 This Agreement covers both Products you choose to distribute for free and Products for which you charge a fee (once payment processing is enabled on the Market). In order to charge a fee for your Products, you must have a valid Payment Account under a separate agreement with a Payment Processor. If you already have a Payment Account with a Payment Processor before signing up for the Market, then the terms of this Agreement shall supersede your Payment Account terms and condition for Products sold via the Market.

You may set the price for your Products in the currencies permitted by the Payment Processor. The Market may display to users the price of Products in their native currency, but it is not responsible for the accuracy of currency rates or conversion

3.2 The price you set for Products will determine the amount of payment you will receive. A Transaction Fee, as defined below, will be charged on the sales price and apportioned to the Payment Processor and, if one exists, the Authorized Carrier. The remainder (sales price less Transaction Fee) will be remitted to you. The "Transaction Fee" is set forth here and may be revised by Google from time to time. Developer is responsible for determining if a Product is taxable and the applicable tax rate for the Payment Processor to collect for each taxing jurisdiction where Products are sold. Developer is responsible for remitting taxes to the appropriate taxing authority.

3.3 You may also choose to distribute Products for free. If the Product is free, you will not be charged a Transaction Fee. You may not collect future charges from users for copies of the Products that those users were initially allowed to download for free. This is not intended to prevent distribution of free trial versions of the Product with an "upsell" option to obtain the full version of the Product: Such free trials for Products are encouraged. However, if you want to collect fees after the free trial expires, you must collect all fees for the full version of the Product through the Payment Processor on the Market. In this Agreement, "free" means there are no charges or fees of any kind for use of the Product. All fees received by Developers for Products distributed via the Market must be processed by the Market's Payment Processor.

3.4 **Special Refund Requirements.** The Payment Processor's standard terms and conditions regarding refunds will apply except the following terms apply to your distribution of Products on the Market.

Products that can be previewed by the buyer (such as ringtones and wallpapers): No refund is required or allowed.

Products that cannot be previewed by the buyer (such as applications): You authorize Google to give the buyer a full refund of the Product price if the buyer requests the refund within 48 hours after purchase.

3.5 **You Support Your Product.** You will be solely responsible for support and maintenance of your Products and any complaints about your Products. Your contact information will be displayed in each application detail page and made available to users for customer support purposes.

Failure to provide adequate support for your Products may result in low Product ratings, less prominent product exposure, low sales and billing disputes. Except in cases when multiple disputes are initiated by a user with abnormal dispute history, billing disputes received by Payment Processor for Products sold for less than \$10 may be automatically charged back to the Developer, in addition to any handling fees charged by the Payment Processor. Chargeback requests for Products \$10 or more will be handled in accordance with the Payment Processor's standard policy.

3.6 Reinstalls. Users are allowed unlimited reinstalls of each application distributed via the Market, provided however that if you remove a Product(s) from the Market pursuant to clauses (i), (ii), (iii) or (iv) of Section 7.1, such Product(s) shall be removed from all portions of the Market and users shall no longer have a right or ability to reinstall the affected Products.

4. Use of the Market by You

4.1 Except for the license rights granted by you in Section 5 below, Google agrees that it obtains no right, title or interest from you (or your licensors) under this Agreement in or to any of Products, including any intellectual property rights which subsist in those applications.

4.2 You agree to use the Market only for purposes that are permitted by (a) this Agreement and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries).

4.3 You agree that if you use the Market to distribute Products, you will protect the privacy and legal rights of users. If the users provide you with, or your Product accesses or uses, user names, passwords, or other login information or personal information, you must make the users aware that the information will be available to your Product, and you must provide legally adequate privacy notice and protection for those users. Further, your Product may only use that information for the limited purposes for which the user has given you permission to do so. If your Product stores personal or sensitive information provided by users, it must do so securely and only for as long as it is needed. But if the user has opted into a separate agreement with you that allows you or your Product to store or use personal or sensitive information directly related to your Product (not including other products or applications) then the terms of that separate agreement will

govern your use of such information. If the user provides your Product with Google Account information, your Product may only use that information to access the user's Google Account when, and for the limited purposes for which, the user has given you permission to do so.

4.4 Prohibited Actions. You agree that you will not engage in any activity with the Market, including the development or distribution of Products, that interferes with, disrupts, damages, or accesses in an unauthorized manner the devices, servers, networks, or other properties or services of any third party including, but not limited to, Android users, Google or any mobile network operator. You may not use customer information obtained from the Market to sell or distribute Products outside of the Market.

4.5 Non-Compete. You may not use the Market to distribute or make available any Product whose primary purpose is to facilitate the distribution of software applications and games for use on Android devices outside of the Market.

4.6 You agree that you are solely responsible for (and that Google has no responsibility to you or to any third party for) any Products you distribute through the Market and for the consequences of your actions (including any loss or damage which Google may suffer) by doing so.

4.7 You agree that you are solely responsible for (and that Google has no responsibility to you or to any third party for) any breach of your obligations under this Agreement, any applicable third party contract or terms of service, or any applicable law or regulation, and for the consequences (including any loss or damage which Google or any third party may suffer) of any such breach.

4.8 The Market will allow you to protect your Products so that users may not share Products with other users or devices.

4.9 Product Ratings. The Market will allow users to rate Products. Only users who download the applicable Product will be able to rate it. Product ratings will be used to determine the placement of Products on the Market with higher rated Products generally given better placement, subject to Google's ability to change placement at Google's sole discretion. The Market may also assign you a composite score for any Product that has not received user ratings. A Developer Composite Score will be a representation of the quality of your Product based on your history and will be determined at Google's sole discretion. For new Developers without Product history, Google may use or publish performance measurements such as uninstall and/or refund rates to identify or remove

Products that are not meeting acceptable standards, as determined by Google. Google reserves the right to display Products to users in a manner that will be determined at Google's sole discretion.

Your Products may be subject to user ratings to which you may not agree. You may contact Google if you have any questions or concerns regarding such ratings.

4.10 Marketing Your Product. You will be responsible for uploading your Products to the Market, providing required Product information to users, and accurately disclosing the security permissions necessary for the Product to function on user Devices. Products that are not properly uploaded will not be published in the Market.

4.11 Restricted Content. Any Product you distribute on the Market must adhere to the Developer Program Policies.

5. License Grants

5.1 You grant to Google a nonexclusive, worldwide, and royalty-free license to: copy, perform, display, and use the Products for administrative and demonstration purposes in connection with the operation and marketing of the Market and to use the Products to make improvements to the Android platform.

5.2 You grant to Google a nonexclusive, and royalty-free license to distribute the Products according to the publishing options selected by you on the Product upload page of the Market.

5.3 Google may use consultants and other contractors in connection with the performance of obligations and exercise of rights under this agreement, provided that such consultants and contractors will be subject to the same obligations as Google. After termination of this Agreement, Google will not distribute your Product, but may retain and use copies of the Product for support of the Market and the Android platform.

5.4 You grant to the user a non-exclusive, worldwide, and perpetual license to perform, display, and use the Product on the Device. If you choose, you may include a separate end user license agreement (EULA) in your Product that will govern the user's rights to the Product in lieu of the previous sentence.

5.5 You represent and warrant that you have all intellectual property rights, including all necessary patent, trademark, trade secret, copyright or other proprietary rights, in and to

the Product. If You use third-party materials, You represent and warrant that you have the right to distribute the third-party material in the Product. You agree that You will not submit material to Market that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including patent, privacy and publicity rights, unless You are the owner of such rights or have permission from their rightful owner to submit the material.

6. Brand Features and Publicity

6.1 **"Brand Features"** means the trade names, trade marks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as owned (or licensed) by such party from time to time.

6.2 Each party shall own all right, title and interest, including without limitation all intellectual property rights, relating to its Brand Features. Except to the limited extent expressly provided in this Agreement, neither party grants, nor shall the other party acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the other party. Subject to the terms and conditions of this Agreement, Developer grants to Google and its affiliates a limited, non-exclusive license during the term of this Agreement to display Developer Brand Features, submitted by Developer to Google, for use solely online or on mobile devices and in either case solely in connection with the distribution and sale of Developer's Product through the Market, or to otherwise fulfill its obligations under this Agreement. If Developer discontinues the distribution of specific Products on the Market, Google will cease use of the discontinued Products' Brand Features pursuant to this Section 6.2, except as necessary to allow Google to effectuate Section 3.6. Nothing in this Agreement gives Developer a right to use any of Google's trade names, trademarks, service marks, logos, domain names, or other distinctive brand features.

6.3 **Publicity.** In addition to the license granted in 6.2 above, for purposes of marketing the presence, distribution and sale of the Developer's Product in the Market, Google and its affiliates may include Developer Brand Features, submitted by Developer to Google: (i) within the Market and in any Google-owned online or mobile properties; (ii) in online or mobile communications outside the Market when mentioned along with other Market Products; (iii) when making announcements of the availability of the Product online or on mobile devices; (iv) in presentations; and (v) in customer lists which appear either online or on mobile devices (which includes, without limitation, customer lists posted on Google

websites). If Developer discontinues the distribution of specific Products on the Market, Google will cease use of the discontinued Products' Brand Features for such marketing purposes. Google grants to Developer a limited, non-exclusive, worldwide, royalty-free license to use the Android Brand Features for the term of this Agreement solely for marketing purposes and only in accordance with the Android Brand Guidelines).

7. Product Takedowns.

7.1 Your Takedowns. You may remove your Products from future distribution via the Market at any time, but you must comply with this Agreement and the Payment Processor's Payment Account terms of service for any Products distributed through the Market, including but not limited to refund requirements. Removing your Products from future distribution via the Market does not (a) affect the license rights of users who have previously purchased or downloaded your Products, (b) remove your Products from Devices or from any part of the Market where previously purchased or downloaded applications are stored on behalf of users, or (c) change your obligation to deliver or support Products or services that have been previously purchased or downloaded by users. Notwithstanding the foregoing, in no event will Google maintain on any portion of the Market (including, without limitation, the part of the Market where previously purchased or downloaded applications are stored on behalf of users) any Product that you have removed from the Market and provided written notice to Google that such removal was due to (i) an allegation of infringement, or actual infringement, of any copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person, (ii) an allegation of defamation or actual defamation, (iii) an allegation of violation, or actual violation, of any third party's right of publicity or privacy, or (iv) an allegation or determination that such Product does not comply with applicable law.

If you remove a Product from the Market pursuant to clauses (i), (ii), (iii) or (iv) of this Section 7.1, and an end user purchased such Product within a year before the date of takedown, at Google's request, you must refund to the affected end user all amounts paid by such end user for such affected Product, less the portion of the Transaction Fee specifically allocated to the credit card/payment processing for the associated transaction.

7.2 Google Takedowns. While Google does not undertake an obligation to monitor the Products or their content, if Google is notified by you or otherwise becomes aware and determines in its sole discretion that a Product or any portion thereof or your Brand Features; (a) violates the intellectual property rights or any other rights of any third party;

(b) violates any applicable law or is subject to an injunction; (c) is pornographic, obscene or otherwise violates Google's hosting policies or other terms of service as may be updated by Google from time to time in its sole discretion; (d) is being distributed by you improperly; (e) may create liability for Google or Authorized Carriers; (f) is deemed by Google to have a virus or is deemed to be malware, spyware or have an adverse impact on Google's or an Authorized Carrier's network; (g) violates the terms of this Agreement or the Developer Program Policies for Developers; or (h) the display of the Product is impacting the integrity of Google servers (i.e., users are unable to access such content or otherwise experience difficulty), Google may remove the Product from the Market or reclassify the Product at its sole discretion. Google reserves the right to suspend and/or bar any Developer from the Market at its sole discretion.

Google enters into distribution agreements with device manufacturers and Authorized Carriers to place the Market software client application for the Market on Devices. These distribution agreements may require the involuntary removal of Products in violation of the Device manufacturer's or Authorized Carrier's terms of service.

In the event that your Product is involuntarily removed because it is defective, malicious, infringes intellectual property rights of another person, defames, violates a third party's right of publicity or privacy, or does not comply with applicable law, and an end user purchased such Product within a year before the date of takedown,:

- (i) you must refund to Google, all amounts received, plus any associated fees (i.e. chargebacks and payment transaction fees), and
- (ii) Google may, at its sole discretion, withhold from your future sales the amount in subsection (i) above.

8. Your Developer Credentials

8.1 You agree that you are responsible for maintaining the confidentiality of any developer credentials that may be issued to you by Google or which you may choose yourself and that you will be solely responsible for all applications that are developed under your developer credentials. Google may limit the number of Developer Accounts issued to you or to the company or organization you work for.

9. Privacy and Information

9.1 In order to continually innovate and improve the Market, Google may collect certain usage statistics from the Market and Devices, including but not limited to, information on how the Market and Devices are being used.

9.2 The data collected is examined in the aggregate to improve the Market for users and Developers and is maintained in accordance with Google's Privacy Policy. To ensure the improvement of Products, limited aggregate data may be available to you upon written request.

10. Terminating this Agreement

10.1 This Agreement will continue to apply until terminated by either you or Google as set out below.

10.2 If you want to terminate this Agreement, you must provide Google with thirty (30) days prior written notice (unless this Agreement terminates under Section 14.1) and cease your use of any relevant developer credentials.

10.3 Google may at any time, terminate this Agreement with you if:

- (A) you have breached any provision of this Agreement; or
- (B) Google is required to do so by law; or
- (C) you cease being an authorized Developer; or
- (D) Google decides to no longer provide the Market.

11. DISCLAIMER OF WARRANTIES

11.1 YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE MARKET IS AT YOUR SOLE RISK AND THAT THE MARKET IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND.

11.2 YOUR USE OF THE MARKET AND ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE MARKET IS AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH USE.

11.3 GOOGLE FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

12. LIMITATION OF LIABILITY

12.1 YOU EXPRESSLY UNDERSTAND AND AGREE THAT GOOGLE, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU UNDER ANY THEORY OF LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY YOU, INCLUDING ANY LOSS OF DATA, WHETHER OR NOT GOOGLE OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

13. Indemnification

13.1 To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless Google, its affiliates and their respective directors, officers, employees and agents, and Authorized Carriers from and against any and all third party claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys fees) arising out of or accruing from (a) your use of the Market in violation of this Agreement, and (b) your Product that infringes any copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person or defames any person or violates their rights of publicity or privacy.

13.2 To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless the applicable Payment Processors (which may include Google and/or third parties) and the Payment Processors' affiliates, directors, officers, employees and agents from and against any and all third party claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys fees) arising out of or accruing from taxes related to Your distribution of Products distributed via the Market.

14. Changes to the Agreement

14.1 Google may make changes to this Agreement at any time by sending the Developer notice by email describing the modifications made. Google will also post a notification on the Market site describing the modifications made. The changes will become effective, and will be deemed accepted by Developer, (a) immediately for those who become Developers after the notification is posted, or (b) for pre-existing Developers, the modified Agreement will become effective upon Developer's acceptance of the modified Agreement (except changes required by law which will be effective immediately). Pre-existing Developers will show their acceptance of the modified Agreement by going to the Market site and accepting the modified Agreement. In the event that Developer does not agree with the modifications to the Agreement within thirty (30) days after the date the email is sent, then Google will suspend the distribution of your Products until Developer agrees to the modified Agreement. In the event that You do not agree with the modifications within ninety (90) days after the date the email is sent, then You must terminate your use of the Market, which will be your sole and exclusive remedy.

15. General Legal Terms

15.1 This Agreement constitutes the whole legal agreement between you and Google and governs your use of the Market, and completely replaces any prior agreements between you and Google in relation to the Market.

15.2 You agree that if Google does not exercise or enforce any legal right or remedy which is contained in this Agreement (or which Google has the benefit of under any applicable law), this will not be taken to be a formal waiver of Google's rights and that those rights or remedies will still be available to Google.

15.3 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of this Agreement is invalid, then that provision will be removed from this Agreement without affecting the rest of this Agreement. The remaining provisions of this Agreement will continue to be valid and enforceable.

15.4 You acknowledge and agree that each member of the group of companies of which Google is the parent shall be third party beneficiaries to this Agreement and that such other companies shall be entitled to directly enforce, and rely upon, any provision of this

Agreement that confers a benefit on (or rights in favor of) them. Other than this, no other person or company shall be third party beneficiaries to this Agreement.

15.5 EXPORT RESTRICTIONS. PRODUCTS ON THE MARKET MAY BE SUBJECT TO UNITED STATES EXPORT LAWS AND REGULATIONS. YOU MUST COMPLY WITH ALL DOMESTIC AND INTERNATIONAL EXPORT LAWS AND REGULATIONS THAT APPLY TO YOUR DISTRIBUTION OR USE OF PRODUCTS. THESE LAWS INCLUDE RESTRICTIONS ON DESTINATIONS, USERS AND END USE.

15.6 The rights granted in this Agreement may not be assigned or transferred by either you or Google without the prior written approval of the other party. Neither you nor Google shall be permitted to delegate their responsibilities or obligations under this Agreement without the prior written approval of the other party.

15.7 This Agreement, and your relationship with Google under this Agreement, shall be governed by the laws of the State of California without regard to its conflict of laws provisions. You and Google agree to submit to the exclusive jurisdiction of the courts located within the county of Santa Clara, California to resolve any legal matter arising from this Agreement. Notwithstanding this, you agree that Google shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

15.8 The obligations in Sections 5, 6.2 (solely as necessary to permit Google to effectuate Section 3.6), 7, 11, 12, 13, and 15 will survive any expiration or termination of this Agreement.